U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 39463745

Date: OCT. 09, 2025

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (Exceptional Ability)

The Petitioner, an English language arts teacher, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner was eligible for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of the required job offer, and thus of a labor certification, would be in the national interest. We dismissed a subsequent appeal and five subsequent motions to reopen. The matter is now before us on motion to reopen and to reconsider.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motion.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

In our decision dismissing the Petitioner's fifth motion to reopen, we acknowledged the Petitioner's argument that, as her proposed endeavor aligned with national educational initiatives her motion to reopen should be granted. We considered information that the Petitioner provided about her proposed endeavor as well as an explanation as to why it is of national importance, as well as the new evidence she had submitted consisting of government and policy reports, academic research and a market analysis, media coverage, and a printout of the May 2023 Occupational and Wage Statistics for Educational Instruction and Library Occupations. We then determined that the Petitioner had not offered new evidence or facts sufficient to overcome our previous decision.

On motion to reopen, the Petitioner contends that the evidence submitted with her fifth motion to reopen constituted new facts because it had not been submitted previously and that we erred in concluding to the contrary.[1] However, we identified and considered each piece of evidence submitted on motion, acknowledged that it was new, but concluded the Petitioner had not overcome our prior decision.

In addition, the Petitioner newly submits results of research that she completed after our previous decision was issued. She asserts that this evidence "demonstrate[es] the successful pilot implementation" of her proposed endeavor in various regions of the United States and therefore establishes that her proposed endeavor is "actively advancing national educational goals in diverse socioeconomic environments." The Petitioner concludes that this "truly new and previously unavailable" evidence constitutes new facts supported by documentary evidence sufficient to overcome our prior decision.

We disagree. The evidence on motion does not overcome our prior findings and the Petitioner has not provided new facts to establish her eligibility at the time of filing. As the Petitioner emphasizes in the current motion, this research was conducted after we issued our prior decision, and therefore after she filed her petition. 8 C.F.R. § 103.2(b)(1) provides that "[a]n applicant must establish that he or she is eligible for the requested benefit at the time of filing the benefit request" and the Form I-290-B Instructions state "that "[a] motion to reopen must state new facts and must be supported by documentary evidence demonstrating eligibility for the required immigration benefit *at the time you filed the application or petition*." (Emphasis added). Here, as this evidence is based upon research that had not been conducted when the Petitioner filed her petition, it is not sufficient to establish her eligibility at the time of filing.

A motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

On motion to reconsider, the Petitioner argues that we incorrectly applied *Matter of Coehlo* when we concluded that the new evidence did not have the potential to change the outcome of our prior decision.[2] Specifically, she contends that had we "fully considered" the "detailed information directly pertaining to her specific project and its national implications", we would have concluded that it did have this potential. However, as noted above, we considered the information that the Petitioner provided about her proposed endeavor and its national importance in our decision and determined that it had not overcome our prior decision. The Petitioner does not otherwise indicate that or explain how our prior decision was based on an incorrect application of law or policy and that our prior decision was incorrect based on the evidence in the record of proceedings at the time of that decision.

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[1] We acknowledge the Petitioner's argument that our dismissal of her fourth motion represents "a factual misinterpretation of the evidence meticulously presented." However, as noted above, the "scope of a motion" is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). Accordingly, we will only review the latest decision in these proceedings, the dismissal of the Petitioner's fifth motion to reopen.

[2] *See Matter of Coehlo*, 20 I&N Dec. at 473.

As noted above, the scope of a motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). Therefore, we will only consider new evidence to the extent that it pertains to our latest decision dismissing the motion to reopen. Here, the Petitioner has not provided new facts to establish that we erred in dismissing the prior motion. Because the Petitioner has not established new facts that would warrant reopening of the proceeding, we have no basis to reopen our prior decision. We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued it. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

**ORDER:** The motion to reopen is dismissed.

**FURTHER ORDER:** The motion to reconsider is dismissed.

**NOTICE:** Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.